

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

RICHARD BAYS,	:	Case No. 3:08-cv-76
	:	
Petitioner,	:	Judge Thomas M. Rose
	:	
v.	:	
	:	
WARDEN, Ohio State Penitentiary,	:	
	:	
Respondent.	:	

**ENTRY AND ORDER OVERRULING OBJECTIONS (DOCS. 267, 270);
ADOPTING SUBSTITUTED REPORT AND RECOMMENDATIONS
(DOC. 265) AND SUPPLEMENT TO SUBSTITUTED REPORT AND
RECOMMENDATIONS (DOC. 269); DISMISSING GROUNDS FOR
RELIEF SIXTEEN, SEVENTEEN, EIGHTEEN AND NINETEEN PLEADED
IN THE SECOND AMENDED PETITION; AND TERMINATING CASE**

This case is before the Court on the Objections (Docs. 267, 270) filed by Petitioner Richard Bays (“Petitioner”) to the Magistrate Judge’s Substituted Report and Recommendations (“Report”) (Doc. 265) and Supplement to Substituted Report and Recommendations (Doc. 270) (“Supplement”). In the Report and Supplement, Magistrate Judge Michael R. Merz recommended that the Court dismiss Grounds for Relief Sixteen, Seventeen, Eighteen and Nineteen pleaded in Petitioner’s Second Amended and Supplemental Petition for a Writ of Habeas Corpus (“Second Amended Petition”) (Doc. 247) for failure to state a claim upon which relief may be granted in habeas corpus.

As required by 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72(b), the Court made a *de novo* review of the record in this case. Upon said review, the Court finds that Petitioner's Objections (Docs. 267, 270) are not well-taken and are hereby **OVERRULED**. The Court **ADOPTS** the Report (Doc. 265) and Supplement (Doc. 270) in their entirety and, accordingly, rules as follows:

- (1) The Warden's Motion to Dismiss (Doc. 250) is **GRANTED**;
- (2) Petitioner's Sixteenth, Seventeenth, Eighteenth and Nineteenth Grounds for Relief are **DISMISSED** without prejudice to their consideration in *In re: Ohio Execution Protocol Litig.*, Case No. 2:11-cv-1016;
- (3) Petitioner is **GRANTED** a certificate of appealability on his Fifth Ground for Relief as already ordered (Doc. 148) and as to his Sixteenth, Seventeenth, Eighteenth and Nineteenth Grounds for Relief;
- (4) Petitioner is **DENIED** a certificate of appealability as to his Fourteenth and Fifteenth Grounds for Relief, as reasonable jurists would not disagree with the denial of those Grounds; and
- (5) The Clerk is directed to enter final judgment and **TERMINATE** this case on the Court's docket.

DONE and **ORDERED** in Dayton, Ohio, this Friday, December 29, 2017.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE